

REGINALD MILON FIELDS,	}	Case No. CV 15-03943-DDP (KK)
Plaintiff,		
v.		ORDER DISMISSING FIRST
		AMENDED COMPLAINT WITH
		LEAVE TO AMEND
JIM MCDONNEL, et al.,	}	
Defendants.		

1

I.

BACKGROUND

On May 26, 2015, Plaintiff filed a civil rights complaint pursuant to 42 U.S.C. § 1983 (“Complaint”). Dkt. 1; Compl. 1. The Complaint named defendants Sheriff Jim McDonnel, C.A. Hinton, Deputy Portilla, and Deputy Parra, and alleged they violated Plaintiff’s constitutional rights by reading his legal mail. Compl. 1, 5, 15-16.¹ On June 1, 2015, the Court issued an Order dismissing the Complaint with leave to amend for failure to state a claim. Dkt. 3; Order 1. The Court’s Order granted Plaintiff leave to cure the Complaint’s deficiencies and amend only with respect to the claims raised in the Complaint by filing a FAC. Order 6 (“Plaintiff may file a First Amended Complaint (“FAC”) to cure the deficiencies discussed [in the Order]. . . . [T]he court grants Plaintiff leave to amend as to all his claims raised here[, in the Complaint].”).

On September 30, 2015, Plaintiff filed the instant FAC against Defendants in their official and individual capacities, alleging nine claims (“Claims One Through Nine”) involving the treatment of Plaintiff’s staph infection and processing of Plaintiff’s mail. Dkt. 19; FAC 1-38.²

II.

PLAINTIFF’S ALLEGATIONS IN THE FAC

Claims One through Five allege defendants Rabadi, Wong, Hanisper, Municipality, and County impeded the treatment of Plaintiff’s staph infection. FAC 7-8, 10-12, 14. Claims Six through Nine allege defendants Hinton, Portilla, Parra, and County mishandled Plaintiff’s mail. *Id.* at 15-17, 25-26.

///

A. Claim One

¹ The Court refers to the Complaint’s pages as if they were consecutively paginated.

² The Court refers to the FAC’s pages as if they were consecutively paginated.

1 In Claim One, Plaintiff alleges on June 6, 2013, defendant Rabadi denied
2 him access to medical care for his staph infection “knowing that the jail has signs
3 everywhere alerting everybody that if you have a[n] open wound to notify the
4 medical staff immediately.” Id. at 8.

5 **B. Claim Two**

6 In Claim Two, Plaintiff alleges on June 21, 2013, he told defendant Wong:
7 “I was hospitalized for 1 month for a STAPH infection. I am still swollen and
8 should have never been discharged from the hospital, I am still sick.” Id. at 11-12.
9 Plaintiff alleges defendant Wong “escorted [him] to the old man dorm and not the
10 hospital” and said “they will take care of you over here.” Id.

11 **C. Claim Three**

12 In Claim Three, Plaintiff alleges on June 22, 2013, he showed his staph
13 infection to defendant Hansiper, who prescribed Plaintiff fifteen days of
14 antibiotics. Id. at 10-11. Plaintiff alleges after fifteen days of antibiotics, he asked
15 defendant Hansiper whether swelling decreased around the infection, but defendant
16 Hansiper ignored his question and ordered him to leave his office. Id. Plaintiff
17 further alleges defendant Hanisper consequently “injured Plaintiff because later
18 Plaintiff broke out again with the STAPH Virus.” Id. at 11.

19 **D. Claim Four**

20 In Claim Four, Plaintiff alleges defendant Municipality failed to maintain a
21 policy of explaining “to staff their duties to take infected inmates immediately to
22 the clinic” and “give proper training[] and supervision to employees so that they
23 know of their obligation to respond to inmates with STAPH symptoms
24 adequately.” Id. at 14.

25 **E. Claim Five**

26 In Claim Five, Plaintiff alleges defendant County “is responsible for making
27 the rules and regulations/Policies for doctors and Medical staff.” Id. at 7.

28 **F. Claim Six**

1 In Claim Six, Plaintiff alleges he filed a lawsuit in the Los Angeles Superior
2 Court on June 18, 2014 and defendant Hinton caused the lawsuit to be voided. Id.
3 at 17, 25-26. Plaintiff alleges on October 16, 2014, defendant Hinton gave
4 Plaintiff two mail items from the Los Angeles Superior Court dated September 8,
5 2014 and September 18, 2014, each of which stated Plaintiff's failure to pay fees
6 within ten days of their date would cause the Los Angeles Superior Court to void
7 his lawsuit. Id. at 17, 25. Plaintiff further alleges the Los Angeles Superior Court
8 voided his lawsuit because he missed the deadlines; defendant Hinton caused him
9 to miss the deadlines by "with[h]olding Plaintiff's mail more than necessary.
10 Depriving access to the Courts and to Petition the redress of his grievances;" and
11 defendant Hinton "violated Calif. Code of regulations concerning mail[,] arbitrarily
12 practicing his own standards in giving mail." Id. at 5, 17-18.

13 **G. Claim Seven**

14 In Claim Seven, Plaintiff alleges on September 9, 2014, he wrote a letter to
15 send to the Los Angeles Superior Court concerning his lawsuit and asked
16 defendant Portilla to "check and sign his outgoing legal mail." Id. at 15-16.
17 Plaintiff alleges "[i]nstead of [j]ust checking the letter for contraband, [defendant
18 Portilla] began to read Plaintiff's mail, word for word;" Plaintiff asked defendant
19 Portilla to stop reading the letter; and defendant Portilla refused. Id. at 16.
20 Plaintiff alleges he consequently did not send the letter. Id. Plaintiff concludes
21 defendant Portilla "violat[ed] the law and [he] should be trained in the procedures
22 of the Legal mail," and defendant Portilla "deprived Plaintiff the right to access the
23 courts." Id.

24 **H. Claim Eight**

25 In Claim Eight, Plaintiff alleges on September 12, 2014, he wrote a letter to
26 send to the Los Angeles Superior Court concerning his lawsuit and asked
27 defendant Parra to "sign Plaintiff's outgoing mail." Id. at 16. Plaintiff alleges
28 "[defendant Parra] began to read Plaintiff's mail," Plaintiff asked defendant Parra

1 to stop reading the letter, and defendant Parra refused. Id. at 16-17. Plaintiff
 2 alleges he consequently did not send the letter. Id. Plaintiff concludes defendant
 3 Parra “deprived Plaintiff access to the courts violating the rules concerning the
 4 mail arbitrarily implementing her own rules.” Id. at 17.

5 **I. Claim Nine**

6 In Claim Nine, Plaintiff alleges defendant County failed to “train their
 7 employees on the procedures regarding Legal mail, . . . [e]ven though an
 8 established policy about the mail exists.” Id. at 15.

9 **III.**

10 **STANDARD OF REVIEW**

11 Pursuant to Federal Rule of Civil Procedure 12(b)(6), a court may dismiss a
 12 complaint for failure to state a claim upon which relief can be granted. Fed. R.
 13 Civ. P. 12(b)(6). The Ninth Circuit has held “[a] trial court may dismiss a claim
 14 *sua sponte* under Fed. R. Civ. P. 12(b)(6)” and has also stated “[s]uch a dismissal
 15 may be made without notice where the claimant cannot possibly win relief.” Omar
 16 v. Sea-Land Service, Inc., 813 F.2d 986, 991 (9th Cir. 1987) (citing Wong v. Bell,
 17 642 F.2d 359, 361–62 (9th Cir. 1981)).

18 A complaint may be dismissed for failure to state a claim “where there is no
 19 cognizable legal theory or an absence of sufficient facts alleged to support a
 20 cognizable legal theory.” Zamani v. Carnes, 491 F.3d 990, 996 (9th Cir. 2007)
 21 (citation and internal quotation marks omitted). In considering whether a
 22 complaint states a claim, a court must accept as true all of the material factual
 23 allegations in it. Hamilton v. Brown, 630 F.3d 889, 892-93 (9th Cir. 2011).
 24 However, the court need not accept as true “allegations that are merely conclusory,
 25 unwarranted deductions of fact, or unreasonable inferences.” In re Gilead Scis.
 26 Sec. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008) (citation and internal quotation
 27 marks omitted). Although a complaint need not include detailed factual
 28 allegations, it “must contain sufficient factual matter, accepted as true, to state a

claim to relief that is plausible on its face.” Cook v. Brewer, 637 F.3d 1002, 1004 (9th Cir. 2011) (citation and internal quotation marks omitted). A claim is facially plausible when it “allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id. (citation and internal quotation marks omitted). The complaint “must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively.” Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

“A document filed pro se is to be liberally construed, and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” Erickson v. Pardus, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007) (citations and internal quotation marks omitted); Woods v. Carey, 525 F.3d 886, 889-90 (9th Cir. 2008).

If the court finds a complaint should be dismissed for failure to state a claim, the court has discretion to dismiss with or without leave to amend. Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000). Leave to amend should be granted if it appears possible the defects in the complaint could be corrected, especially if the plaintiff is pro se. Id. at 1130-31; see also Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995). However, if, after careful consideration, it is clear a complaint cannot be cured by amendment, the court may dismiss without leave to amend. Cato, 70 F.3d at 1107-11; see also Moss v. U.S. Secret Serv., 572 F.3d 962, 972 (9th Cir. 2009).

IV.

DISCUSSION

Plaintiff’s FAC fails to allege facts sufficient to show Defendants violated his constitutional rights. For reasons discussed below, the Court dismisses the FAC with leave to amend.

///

A. Plaintiff Misjoins Claims One Through Five Against Defendants

**Rabadi, Wong, Hanisper, Municipality, And County In Their Official
And Individual Capacities**

Claims One through Five allege defendants Rabadi, Wong, Hanisper, Municipality, and County, in their official and individual capacities, impeded the treatment of Plaintiff's staph infection. FAC 7-8, 10-12, 14. As discussed below, the Court dismisses Claims One through Five because they were not raised in the Complaint and are unrelated to Plaintiff's original claims.

1. Applicable Law

If a court issues an order granting a plaintiff leave to amend, the plaintiff's failure to comply with the court's order may warrant dismissal. Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992).

In addition, under Federal Rule of Civil Procedure 20, a plaintiff may join defendants in a single complaint if: (1) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (2) any question of law or fact common to all defendants will arise in the action. Fed. R. Civ. P. 20(a)(2). Misjoinder occurs where the facts giving rise to claims lack "similarity in the factual background." Coughlin v. Rogers, 130 F.3d 1348, 1350 (9th Cir. 1997); see Talib v. Nicholas, 2015 WL 456546, at *9 (C.D. Cal. Feb. 2, 2015) ("General allegations are not sufficient to constitute similarity when the specifics are different.").

2. Analysis

Here, Plaintiff's FAC misjoins Claims One through Five. FAC 4-5, 8-14. Plaintiff's Complaint alleged defendants interfered with his mail. Compl. 15-16. The Court's June 1, 2015 Order granted Plaintiff leave to cure the Complaint's deficiencies and amend only with respect to the claims raised in the Complaint. Order 6. Plaintiff's FAC now attempts to join new claims that are wholly unrelated to his original claims. FAC 7-8, 10-12, 14. Specifically, Claims One

1 through Five against defendants Rabadi, Wong, Hanisper, Municipality, and
 2 County arise from their alleged interferences with Plaintiff's staph infection
 3 treatment. Id. The FAC's newly added Claims One through Five bear no relation
 4 to the alleged mail mishandling that comprises Plaintiff's original claims.
 5 Coughlin, 130 F.3d at 1350. Therefore, the Court dismisses Claims One through
 6 Five against defendants Rabadi, Wong, Hanisper, Municipality, and County in
 7 their official and individual capacities because such claims fail to comply with the
 8 Court's Order and are unrelated to Plaintiff's original claims. Ferdik, 963 F.2d at
 9 1260; Fed. R. Civ. P. 20(a)(2). If Plaintiff wishes to continue to seek relief for his
 10 claims against defendants Rabadi, Wong, Hanisper, Municipality, and County
 11 arising out of alleged interferences with his staph infection treatment, he must file a
 12 separate action. Coughlin, 130 F.3d at 1350.

13 **B. Plaintiff Fails To State Claims Against Defendants Hinton, Portilla, and**
 14 **Parra In Their Official Capacities**

15 Plaintiff's FAC sues defendants Hinton, Portilla, and Parra in their official
 16 and individual capacities. FAC 5-7. As discussed below, the Court dismisses
 17 Plaintiff's official capacity claims.

18 **1. Applicable Law**

19 An "official-capacity suit is, in all respects other than name, to be treated as
 20 a suit against the entity." Kentucky v. Graham, 473 U.S. 159, 166, 105 S. Ct.
 21 3099, 87 L. Ed. 2d 114 (1985); see also Brandon v. Holt, 469 U.S. 464, 471-72,
 22 105 S. Ct. 873, 83 L. Ed. 2d 878 (1985); Larez v. City of Los Angeles, 946 F.2d
 23 630, 646 (9th Cir. 1991). Such a suit "is not a suit against the official personally,
 24 for the real party in interest is the entity." Graham, 473 U.S. at 166. Because no
 25 respondeat superior liability exists under § 1983, a municipality is liable only for
 26 injuries that arise from an official policy or longstanding custom. Monell v. Dep't
 27 of Soc. Servs. of City of New York, 436 U.S. 658, 694, 98 S. Ct. 2018, 56 L. Ed.
 28 2d 611 (1978); see also City of Canton v. Harris, 489 U.S. 378, 385, 109 S. Ct.

1 1197, 103 L. Ed. 2d 412 (1989). A plaintiff must show “that a [county] employee
 2 committed the alleged constitutional violation pursuant to a formal governmental
 3 policy or a longstanding practice or custom which constitutes the standard
 4 operating procedure of the local governmental entity.” Gillette v. Delmore, 979
 5 F.2d 1342, 1346 (9th Cir. 1992) (internal quotation marks omitted). In addition, he
 6 must show the policy was “(1) the cause in fact and (2) the proximate cause of the
 7 constitutional deprivation.” Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996).

8 **2. Analysis**

9 Here, Plaintiff alleges defendants Hinton, Portilla, and Parra violated the
 10 relevant policies regarding inmate legal mail. FAC 5, 15-17. Specifically, Plaintiff
 11 alleges defendant Hinton “violated Calif. Code of regulations concerning mail.”
 12 Id. at 5. Plaintiff further alleges defendant Portilla “violat[ed] the law and should
 13 be trained in the procedures of the Legal mail.” Id. at 16. Moreover, Plaintiff
 14 alleges defendant Parra “violat[ed] the rules concerning the mail.” Id. at 17.
 15 Hence, Plaintiff actually appears to allege defendants Hinton, Portilla, and Parra
 16 acted *in violation* of government policy, rather than pursuant to such policy.
 17 Therefore, Plaintiff fails to state official capacity claims against any of the
 18 individual defendants. Gillette, 979 F.2d at 1346.

19 **C. Claim Six Fails To State First And Fourteenth Access To The Courts** 20 **Claims Against Defendant Hinton In His Individual Capacity**

21 Claim Six alleges defendant Hinton violated the First and Fourteenth
 22 Amendments by causing delays in Plaintiff’s receipt of mail from the Los Angeles
 23 Superior Court. FAC 5, 15, 17-18, 25. As discussed below, the Court dismisses
 24 Claim Six because Plaintiff fails to allege defendant Hinton actively interfered in
 25 order to hinder Plaintiff’s ability to litigate his lawsuit in the Los Angeles Superior
 26 Court.

27 **1. Applicable Law**

28 The First and Fourteenth Amendments provide the right to access the courts,

1 which means inmates must be able to litigate claims challenging the conditions of
 2 their confinement without active interference by prison officials. Silva v. Di
 3 Vittorio, 658 F.3d 1090, 1103 (9th Cir. 2011). To state a claim against prison
 4 officials for denial of access to the courts during an inmate's pending civil
 5 litigation, the inmate must allege the prison officials acted "in order to hinder his
 6 ability to litigate his pending civil lawsuits." Id. at 1104.

7 **2. Analysis**

8 Here, Claim Six fails to allege facts sufficient to state First and Fourteenth
 9 Amendment violations. FAC 5, 15, 17-18, 25-26. Plaintiff alleges defendant
 10 Hinton caused him to miss deadlines by "with[h]olding Plaintiff's mail more than
 11 necessary. Depriving access to the Courts and to Petition the redress of his
 12 grievances." Id. at 17-18. However, Plaintiff does not allege facts suggesting
 13 defendant Hinton actively interfered with Plaintiff's mail "in order to hinder his
 14 ability to litigate his pending lawsuits." Silva, 658 F.3d at 1104. Thus, Claim Six
 15 fails to allege facts sufficient to show defendant Hinton denied Plaintiff access to
 16 the courts. Id.

17 **D. Claims Seven and Eight Fail To State Sixth Amendment Confidential** 18 **Legal Mail Claims Against Defendants Portilla And Parra In Their** 19 **Individual Capacities**

20 Claims Seven and Eight allege defendants Portilla and Parra violated the
 21 Sixth Amendment by reading Plaintiff's mail to the Los Angeles Superior Court.
 22 FAC 15-16. As discussed below, the Court dismisses Claims Seven and Eight
 23 because correspondence between Plaintiff and the Los Angeles Superior Court
 24 does not constitute legal mail.

25 **1. Applicable Law**

26 A Sixth Amendment violation occurs where prison officials read
 27 correspondence between an inmate and his lawyer. Nordstrom v. Ryan, 762 F.3d
 28 903, 906 (9th Cir. 2014). "This is because it is highly likely that a prisoner would

1 not feel free to confide in his lawyer such things as incriminating or intimate
 2 personal information—as is his Sixth Amendment right to do—if he knows that the
 3 guards are reading his mail.” Id. However, correspondence between an inmate
 4 and a court does not constitute “legal mail” implicating Sixth Amendment
 5 protections. Id.; Meador v. Pleasant Valley State Prison, 312 F. App’x 954, 955
 6 (9th Cir. 2009) (stating “because the mail at issue appeared to come from the
 7 California Court of Appeal, it did not constitute constitutionally protected ‘legal
 8 mail’”).³

9 **2. Analysis**

10 Here, Claims Seven and Eight fail to allege facts sufficient to state Sixth
 11 Amendment violations. FAC 15-17. Plaintiff alleges defendants Portilla and Parra
 12 read letters he intended to send to the Los Angeles Superior Court. Id. at 15-16.
 13 However, correspondence to the Los Angeles Superior Court does not constitute
 14 legal mail entitled to Sixth Amendment protections. Nordstrom, 762 F.3d at 906.
 15 Therefore, the Court dismisses Claims Seven and Eight because they do not allege
 16 defendants Portilla and Parra violated Plaintiff’s Sixth Amendment rights by
 17 reading his legal mail. Id.

18 **E. Claim Nine Fails To State A Claim Against Defendant County**

19 Claim Nine alleges defendant County failed to “train their employees on the
 20 procedures regarding Legal mail, . . . [e]ven though an established policy about the
 21 mail exists.” FAC 15. As discussed below, the Court dismisses Claim Nine
 22 because it is conclusory and fails to show Plaintiff has been deprived of a
 23 constitutional or statutory right.

24 **1. Applicable Law**

25 In determining whether a plaintiff’s complaint states a claim, “the tenet that
 26

27
 28 ³ The Court may cite unpublished Ninth Circuit opinions issued on or after January 1, 2007.
 U.S.Ct.App. 9th Cir. Rule 36–3(b); Fed. R.App. P. 32.1(a).

1 a court must accept as true all of the allegations contained in a complaint is
 2 inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of
 3 action, supported by mere conclusory statements, do not suffice.” Ashcroft v.
 4 Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) (citing
 5 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964, 167 L. Ed.
 6 2d 929 (2007)).

7 In addition, to hold a county liable under Section 1983, a plaintiff must first
 8 establish that he has been deprived of a constitutional or statutory right. See City
 9 of Los Angeles v. Heller, 475 U.S. 796, 799, 106 S.Ct. 1571, 1573, 89 L.Ed.2d 806
 10 (1986) (deficient policy cannot support Monell liability when there has been no
 11 constitutional harm); Villegas v. Gilroy Garlic Festival Ass’n, 541 F.3d 950, 957
 12 (9th Cir.2008) (“Because there is no constitutional violation, there can be no
 13 municipal liability.”); Scott v. Henrich, 39 F.3d 912, 916 (9th Cir.1994) (“While
 14 the liability of municipalities doesn’t turn on the liability of individual officers, it is
 15 contingent on a violation of constitutional rights. Here, the municipal defendants
 16 cannot be held liable because no constitutional violation occurred.”).

17 **2. Analysis**

18 Here, Plaintiff makes the conclusory allegation that defendant County had a
 19 policy with respect to mail, but failed to train employees about the policy. FAC
 20 15. However, Plaintiff’s “mere conclusory statements, do not suffice,” Ashcroft,
 21 556 U.S. at 678, and thus “there is no cognizable legal theory or an absence of
 22 sufficient facts alleged to support a cognizable legal theory,” Zamani, 491 F.3d at
 23 996 (citation and internal quotation marks omitted). Moreover, as discussed
 24 previously in section D, Plaintiff fails to establish a constitutional violation with
 25 respect to “legal mail,” hence, his claim against defendant County regarding this
 26 issue necessarily fails. Monell, 436 U.S. at 690.

27 **IV.**

28 **LEAVE TO FILE SECOND AMENDED COMPLAINT**

1 For the foregoing reasons, the FAC is subject to dismissal. As the Court is
2 unable to determine whether amendment would be futile, leave to amend is
3 granted. See Lucas v. Dep't of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per
4 curiam).

5 Accordingly, IT IS ORDERED THAT within 21 days of the service date of
6 this Order:

7 1) Plaintiff may file a Second Amended Complaint to attempt to cure the
8 deficiencies discussed above. The Clerk of Court is directed to mail Plaintiff a
9 blank Central District civil rights complaint form to use for filing the Second
10 Amended Complaint, which the Court encourages Plaintiff to use.

11 2) If Plaintiff chooses to file a Second Amended Complaint, Plaintiff
12 must clearly designate on the face of the document that it is the "Second Amended
13 Complaint," it must bear the docket number assigned to this case, and it must be
14 retyped or rewritten in its entirety, preferably on the court-approved form. Plaintiff
15 shall not include new defendants or new allegations that are not reasonably related
16 to the claims asserted in the Complaint. In addition, the First Amended Complaint
17 must be complete without reference to the Complaint or any other pleading,
18 attachment, or document.

19 An amended complaint supersedes the preceding complaint. Ferdik, 963
20 F.2d at 1262. After amendment, the Court will treat all preceding complaints as
21 nonexistent. Id. Because the Court grants Plaintiff leave to amend as to all his
22 claims raised here, any claim raised in a preceding complaint is waived if it is not
23 raised again in the Second Amended Complaint. Lacey v. Maricopa Cnty., 693
24 F.3d 896, 928 (9th Cir. 2012).

25 ///

26 ///

1 **The Court cautions Plaintiff that his failure to timely comply with this**
2 **Order may result in the Court dismissing this action for failure to prosecute**
3 **and comply with court orders.**

4
5
6
7 DATED: OCTOBER 7, 2015

A handwritten signature in black ink, appearing to read "Kenly Kiya Kato", written over a horizontal line.

8 HONORABLE KENLY KIYA KATO
9 UNITED STATES MAGISTRATE JUDGE
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28